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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALEX MORGAN, MEGAN RAPINOE, BECKY SAUERBRUNN, CARLI LLOYD, MORGAN BRIAN, JANE CAMPBELL, DANIELLE COLAPRICO, ABBY DAHLKEMPER, TIERNA DAVIDSON, CRYSTAL DUNN, JULIE ERTZ, ADRIANNA FRANCH, ASHLYN HARRIS, TOBIN HEATH, LINDSEY HORAN, ROSE LAVELLE, ALLIE LONG, MERRITT MATHIAS, JESSICA MCDONALD, SAMANTHA MEWIS, ALYSSA NAEHER, ELLEY O'HARA, CHRISTEN PRESS, MALLORY PUGH, CASEY SHORT, EMILY SONNETT, ANDI SULLIVAN, and MCCALL ZERBONI,

Plaintiffs,

v.

UNITED STATES SOCCER FEDERATION, INC.,

Defendant.

Case No. 2:19-cv-01717-RGK-AGR

DEFENDANT UNITED STATES SOCCER FEDERATION'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER VENUE PURSUANT TO THE FIRST-TO-FILE RULE

Date : July 1, 2019
Time : 9:00 a.m.
Courtroom : 850
Judge: : Hon. R. Gary Klausner

Complaint Filed: March 8, 2019

Defendant United States Soccer Federation, Inc. ("Defendant" or "US Soccer"), submits this Reply in support of its motion to transfer venue to the Northern District of California where a previously-field suit, *Hope Solo v. United States Soccer Federation, Inc.*, Case No. 3:18-cv-05215-JD, involving the same legal issues and overlapping parties is already pending ("Motion").

In its opening brief (Dkt. 46), US Soccer demonstrated that all three threshold considerations for application of the first-to-file rule—chronology of the lawsuits, similarity of the parties, and similarity of the issues—support transferring this case to the Northern District of California. As explained below, Plaintiffs' response does not seriously contest any of these considerations for the first-to-file rule, a rule that the Ninth Circuit has counseled "should not be disregarded lightly." *Church of Scientology v. U.S. Dep't of the Army*, 611 F.2d 738, 750 (9th Cir. 1979). Rather, Plaintiffs lean on purported equitable factors and accusations of ill motives to persuade the Court to maintain their case in this Court. These arguments do not constitute compelling circumstances necessary to depart from the first-to-file rule and justify maintenance of a second litigation in a second venue involving substantially similar parties and the same central issues.

I. The First-to-File Rule Applies Here and Should Be Followed to Consolidate the Two Actions.

As Plaintiffs note, the first-to-file rule should apply to conserve judicial resources and avoid duplicative litigation if the three requirements established by the Ninth Circuit are met: (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues. (Dkt. 50 at 10, citing *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991)). All three requirements are met.

A. *Solo* Is The First-Filed Case.

Plaintiffs do not contest that *Solo* was filed in the Northern District of California before *Morgan* was filed in the Central District of California.

B. The Parties in *Solo* and *Morgan* Are Substantially Similar.

The parties in *Morgan* and Solo are nearly identical because *Solo* is a putative class member in *Morgan* and all *Morgan* plaintiffs are putative class members in *Solo*. Plaintiffs insist that *Solo* is a single-plaintiff lawsuit, but Solo's complaint demonstrates that she seeks relief on behalf of herself and "similarly situated former and current WNT members" under the Equal Pay Act and Title VII and thus purports to bring a collective and class action. (Solo Complaint, ¶¶ 28-30, 34-36). Solo's putative class and collective action would encompass the entire Women's National Team ("WNT"). Thus, the second requirement is met. In the context of two putative class actions, the issue is not whether the class representatives are identical, but rather whether the proposed classes are substantially the same. *Hilton v. Apple, Inc.*, No. C-13-2167 EMC, 2013 WL 5487317, at *7 (N.D. Cal. Oct. 1, 2013); *see also Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015) ("the first-to-file rule does not require exact identity of the parties, . . . only substantial similarity of parties.").

Even accepting Plaintiffs' argument that Solo intends to proceed as an individual plaintiff, this should not preclude application of the first-to-file rule. *Wright v. RBC Capital Markets Corp.*, No. CIVS093601FCDGGH, 2010 WL 2599010, at *7 (E.D. Cal. June 24, 2010) (applying first-to-file rule to transfer putative class action to action involving individual plaintiffs). The parties need not be identical, and similarity of the parties is satisfied even "if some [of] the parties in one matter are also in the other matter, regardless of whether there are additional unmatched parties in one or both matters." *Prime Healthcare Servs., Inc. v. Harris*, No. EDCV 15-1934-GHK, 2016 WL 663152, at *3 (C.D. Cal. Mar. 31, 2016). There is sufficient overlap to meet the lenient similarity of parties requirement in this case.

In the event that the Court transfers this action to the Northern District of California, Plaintiffs will suffer no prejudice. They will still be able to proceed on their individual claims and to move for class and/or collective action certification of those claims. In fact, Plaintiffs' preferred procedural method for pursuing their claims is to

consolidate them with the claims of Solo and other current and former WNT players; this is evidenced by their motion for consolidation as a multidistrict litigation ("MDL"), as well the fact that they style this action as a putative class and collective action.

Neither of the cases cited by Plaintiffs to support their argument that the parties lack similarity apply here. In *Ross v. U.S. Bank Nat. Ass'n*, 542 F. Supp. 2d 1014, 1020 (N.D. Cal. 2008), the first-filed case began as a putative collective action, but the court denied class certification. Similarly, in *Dubee v. P.F. Chang's China Bistro, Inc.*, No. C 10-01937 WHA, 2010 WL 3323808, at *2 (N.D. Cal. Aug. 23, 2010), the first-filed action began as a putative class action, but the class representative declined to move for class certification. In *Ross* and *Dubee*, the window to certify a class action in the first-filed action transpired, and the plaintiffs who filed the later action would not be able to move for certification of their proposed class. In both of these cases, the plaintiffs who filed the second putative class and collective actions were prejudiced because they were never going to have the opportunity to proceed on a class or collective basis. By contrast, in this case, Plaintiffs can litigate this case in the Northern District of California in the exact same manner in which they propose to litigate it in this Court. Given that the Ninth Circuit has directed district courts not to apply the rule "mechanically," any differences between the parties in *Solo* and *Morgan* should be ignored. *Herer v. Ah Ha Pub., LLC*, 927 F. Supp. 2d 1080 (D. Or. 2013) (applying first-to-file rule where any potential prejudice was negated by transfer rather than dismissal of the action).

C. As Plaintiffs Conceded in Their JPML Briefing, *Morgan* and *Solo* Involve the Same Issues and Facts to Be Litigated.

There is no serious dispute that the third and final threshold consideration for application of the first-to-file rule—similarity of the issues—is met. Both *Solo* and *Morgan* involve claims under the Equal Pay Act and Title VII alleging that members of the Women's National Team are paid less than members of the Men's National Team.

Plaintiffs now try to contend that these cases do not involve the same issues. *See* Dkt. 50 at p. 8 ("Solo's individual claims do not encompass the same parties or the same

issues as this putative class actions.") and p. 6 ("Solo's individual action" does not involve the "same issues.").

Plaintiffs' contention should be dismissed for three reasons. First, as noted in the section above, both *Solo* an *Morgan* purport to seek class and collective treatment. Second, all that is required is that the issues be substantially similar, and not identical. Third, Plaintiffs' argument is contrary to the position they took before the MDL panel. Indeed, Plaintiffs moved to consolidate *Solo* with this case pursuant to 28 U.S.C. § 1407 with the Judicial Panel on Multidistrict Litigation ("JPML") because, by Plaintiffs' own contentions, the two actions "involve common issues of law and fact that arise from the United States Soccer Federation's discriminatory pay practices and are appropriate" for consolidation. (Dkt. 9-1 at 5.) Plaintiffs further argued that consolidation of *Morgan* and *Solo* is warranted for the "convenience of the parties and witnesses, and will promote the just and efficient conduct of this litigation." (*Id.* at 6.) Such goals are furthered because consolidation will have the effect of: "(1) eliminating duplicative discovery; (2) avoiding conflicting rulings and schedules; (3) reducing litigation cost[s]; and (4) saving time and effort of the parties, attorneys, witnesses, and courts." (*Id.* at 8.) They also contended within the first minute of oral argument before the JPML that "all the parties here will agree that there are numerous issues of law and fact that are in common between the two cases." (Dkt. 50-3 at 3:11-12.)[1]

It is clear that the primary issues to be litigated in *Morgan* and *Solo* are nearly identical: whether US Soccer's pay practices violate the Equal Pay Act and Title VII. Plaintiffs cannot seriously dispute that the third factor is met.

II. The Alleged Equitable Concerns Do Not Preclude Application of the First-to-File Rule.

Unable to succeed on any of the threshold factors under the first-filed analysis, Plaintiffs resort to a combination of equitable considerations and name calling, describing US Soccer's motion as "thinly veiled," "inequitable," or "improper "forum shopping,"

[1] As explained below, Plaintiffs' request for MDL consolidation was denied. (Dkt. 51.)

and a "disingenuous application of the first-to-file rule" constituting "pure litigation gamesmanship" that is "not in good faith." (Dkt. 50 at 5, 7, and 11). Plaintiffs face a "high burden" of convincing the Court that such equitable concerns should preclude application of the first-to-file rule. *Tricom Research, Inc. v. Tactical Support Equipment, Inc.*, 2008 WL 11338513, at *3 (C.D. Cal. June 27, 2008) (Klausner, J.).

Plaintiffs' argument based on purported equitable considerations is premised first on the fact that neither *Solo* nor *Morgan* have sufficient connections to the Northern District of California. US Soccer does not disagree about the non-existent or shallow connections that either case has to the California federal courts. But the Northern District of California has denied US Soccer's motion to transfer *Solo*, so *Solo* will remain in the Northern District of California, regardless of the connections that she has to that forum. (*Solo v. US Soccer*, Case No. 3:18-cv-05215-JD, Dkt. 49.) Litigating in both forums would be far from equitable and is favored by neither US Soccer nor Plaintiffs. (*See* Plaintiffs' Motion for MDL Centralization, Dkt. 9-1.)

Plaintiffs make much of the fact that US Soccer sought to transfer *Solo* to the Northern District of Illinois, and charge that US Soccer's "real objective" is to move the venue for both cases to that district. (Dkt. 50 at 5, 7, and 11.) US Soccer believes that the Northern District of Illinois is the most appropriate venue for both cases, but that contention has been rejected by the district court in *Solo*, is now moot, and was never raised in this Court.

Nothing about US Soccer's decision to ask that *Solo* be transferred to the Northern District of Illinois well before this lawsuit was filed demonstrates forum shopping or other inappropriate conduct. Even though US Soccer prefers to proceed in the Northern District of Illinois, the premise of its first-to-file motion is that it wishes that the cases be heard by a single court. At this point, that court will not be the Northern District of Illinois because transfer of *Solo* to that court has been denied. Nor will that court be one selected by JPML because the JPML denied Plaintiff's request for centralization. Thus, the *only* court in which *Solo* and *Morgan* can be heard together is the Northern District of

California, and that is where US Soccer contends *Morgan* should be heard (with *Solo*). Notably, and contrary to Plaintiffs' allegation that US Soccer's current "real objective" is a Chicago venue, US Soccer files this reply brief urging transfer to the Northern District of California *after* the *Solo* court rejected its request to move that case to Chicago and with the full understanding that there is now no procedural vehicle available to move either *Solo* or *Morgan* to Chicago.

Without citing any supporting authority, Plaintiffs insist that a "dispositive reason why the first-to-file doctrine cannot be applied is that Solo's counsel has agreed to stipulate to transfer her action to the Central District of California" in the context of the JPML hearing. (Dkt. 50 at 12.) This argument misses the mark. The so-called "stipulation" to which Plaintiffs refer is merely a statement by Solo's counsel at the end of the May 30, 2019 oral argument before the JMPL in which he stated he was "open" to transfer of *Solo* to the Central District of California and that consenting to that "would be fine with us." No stipulation, motion, or other pleading has been filed since. Indeed, Solo opposed MDL Centralization of her case with this case and asked that this action be transferred to the Northern District of California under the first-to-file rule in her briefing filed before the JPML. (*In re: United States Soccer Federation Pay Discrimination Litigation*, MDL No. 2890, Dkt. 13 at 3.) Given that there is no motion to transfer venue pending in *Solo*, the only avenue at this juncture for a single court to hear *Solo* and *Morgan* is for this Court to transfer this case to the first-filed *Solo* action. Plaintiffs wisely do not ask this Court to order that *Solo* be transferred to this Court, as this Court lacks such authority.

Plaintiffs also ask the Court not to apply the first-to-file rule because this forum is allegedly more convenient for them, but such arguments are properly be raised with the court presiding over the first-filed action and are not this Court's responsibility to resolve. *Youngevity Intern., Inc. v. Renew Life Formulas,* 42 F. Supp. 3d 1377, 1384 (S.D. Cal. 2014) (declining to analyze which forum is more convenient under 28 U.S.C. § 1404(a) because the court in the first-filed cation should resolve them).

Moreover, where the first-to-file rule requirements are clearly met, "modest inconvenience to the Plaintiffs" does not override the rule). *Bodley v. Whirlpool Corp*., 2018 WL 2357640, at *3 (N.D. Cal. May 24, 2018). Plaintiffs cite no case in which modest inconvenience, alone, was enough to warrant rejection of the first-to-file rule, and "[a]s other district courts have pointed out, a motion to transfer pursuant to the first-to-file rule does not depend on the presence or absence of the § 1404(a) considerations." *White v. Peco Foods, Inc.*, 546 F. Supp. 2d 339, 343 (S.D. Miss. 2008). The cases that Plaintiffs cite for rejecting the first-to-file rule where the forum of the later-filed action was more convenient are distinguishable from this case because in all of those cases, another equitable factor precluded application of the first-to-file rule. *See Wells Fargo Bank, N.A. Tr. for Natividad Caballero 2007 Ins. Tr. v. Principal Life Ins. Co.*, No. CV0900068DDPRZX, 2009 WL 10671947, at *4 (C.D. Cal. Apr. 22, 2009) (court declined to apply the first-to-file rule because it was an anticipatory suit); *Alaris Med. Sys. Inc. v. Filtertek Inc.*, No. CIV. 00-CV-2404-LAJB, 2001 WL 34053241, at *3 (S.D. Cal. Dec. 20, 2001) (same); *S&N Enterprises, Inc. of Virginia v. WowWee USA, Inc.*, No. 18CV2255-GPC(AGS), 2018 WL 6266569, at *5 (S.D. Cal. Nov. 30, 2018), appeal dismissed, No. 18-56687, 2019 WL 1440963 (9th Cir. Feb. 20, 2019) (same); *Nuance Commc'ns, Inc. v. Abbyy Software House*, No. CV0801097AHMFFMX, 2008 WL 11338129, at *3 (C.D. Cal. June 3, 2008) (court declined to apply the first-to-file rule because there was evidence of forum shopping and the first-filed action was filed just one day before the later-filed action). Instead, as one court noted, "consideration of the convenience factors is appropriate as a double-check on whether the Court appropriately declines to apply the first-to-file doctrine" because of some other equitable consideration. *Wells Fargo Bank*, 2009 WL 10671947, at *4.

Regardless, the convenience of the parties is a neutral factor. The Northern District of California has just as much connection to this case as this district. Only two of the Plaintiffs (Alex Morgan and Christen Press) reside in the Central District of California. (Cmplt., Dkt. 1 at ¶¶ 6, 28.) Just as many Plaintiffs (Abby Dahlkemper and Tierna

Davidson) reside in the Northern District of California, and two more reside in the northwest coast: Megan Rapinoe and Becky Sauerbrunn, who reside in Pacific Northwest: Megan Rapinoe, Becky Sauerbrunn, Adrianna French, Tobin Heath, Allie Long, and Merritt Mathias, all of whom live in either Washington or Oregon. (*Id.* at ¶¶ 7, 8, 13, 14, 17, 19, 22, 23.) The remaining Plaintiffs reside throughout the country. (See generally id. at ¶¶ 6-33.) Plaintiffs' assertion that Los Angeles is the "home" of the WNT is unsupported and false given that US Soccer's headquarters are in Chicago. (*Id.* at ¶ 34.)

Plaintiffs' only other argument for why the case should remain in the Central District of California is that one of the training facilities that the WNT uses is located in Carson, California. The Carson training facility has nothing to do with the compensation decisions on which Plaintiffs base their claims, and none of the U.S. Soccer individuals in key leadership positions or decision makers have an office or work out of Carson, California. (*In re: United States Soccer Federation Pay Discrimination Litigation*, MDL No. 2890, Dkt. 14 at 18.) Plaintiffs' allegations that the Carson training facility is "the closest thing" to the WNT's home are belied by the facts. A review of the locations of WNT training camps and games reveals that the team was at the Carson facility for just 6 out of 87 (less than 7%) of the camps from 2014-2019. (*Id.*) A small convenience, for a small number of Plaintiffs, for a small portion of their time together does not warrant rejection of the first-to-file rule when all of the requirements are so plainly met. Accordingly, the Court should consolidate this matter with the first-filed *Solo* action pending in the Northern District of California.

III. Conclusion

US Soccer desires coordination of *Solo* and *Morgan*, and it appears that Plaintiffs do as well given their request for MDL treatment. The JPML denied Plaintiffs' motion for centralization because MDL centralization is not necessary for just two cases pending in the same state when other options for consolidating *Morgan* and *Solo* are plainly available. The JPML reasoned, "We have held that where a reasonable prospect exists that resolution of Section 1404 motions could eliminate the multidistrict character of a

litigation, transfer under Section 1404 is preferable to centralization." (Dkt. 51, quoting *In re: Gerber Probiotic Prods. Mktg. and Sales Practices Litig.*, 899 F. Supp. 2d 1378, 1380 (J.P.M.L. 2012)) (internal quotations omitted). In particular, the JPML noted that this motion is pending to consolidate *Morgan* with *Solo* under the first-to-file rule, which would achieve the same goals of promoting efficiency and justice that MDL centralization would achieve without the added resources an MDL requires. In effect, the JPML entrusted this Court to decide whether consolidation is appropriate under the circumstances. Because all parties prefer to litigate the two cases in one consolidated action and forum, the Court should apply the first-to-file rule and grant US Soccer's motion to transfer this action to the Northern District of California where *Solo* is pending.

While Plaintiffs appear to prefer the transfer of *Solo* to this Court, there is no basis for this Court to do so. The consequence of Plaintiffs' position on this motion would be for two different courts to adjudicate the same dispute between substantially similar, if not identical, parties. This Court should invoke the first-to-file rule to avoid that outcome and transfer venue of this case to the Northern District of California.

DATED: June 17, 2019

Respectfully submitted,

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